

by all U.S. Reporters of the affiliate combined, and for which any one of the three items listed in paragraph (f)(3)(ii)(A) of this section was greater than \$100 million (positive or negative) at the end of, or for, the affiliate's fiscal year.

(iv) * * *

(A) None of the three items listed in paragraph (f)(3)(ii)(A) of this section exceeds \$30 million (positive or negative).

(B) For fiscal year 2002 only, it is less than 20 percent owned, directly or indirectly, by all U.S. Reporters of the affiliate combined and none of the three items listed in paragraph (f)(3)(ii)(A) of this section exceeds \$100 million (positive or negative).

(C) For fiscal years other than 2002, it is less than 20 percent owned, directly or indirectly by all U.S. Reporters of the affiliate combined.

* * * * *

§ 806.15 Foreign direct investment in the United States.

(a) *Specific definitions*—(1) *Foreign direct investment in the United States* means the ownership or control, directly or indirectly, by one foreign person of 10 per centum or more of the voting securities of an incorporated U.S. business enterprise or an equivalent interest in an unincorporated U.S. business enterprise, including a branch.

(2) *U.S. affiliate* means an affiliate located in the United States in which a foreign person has a direct investment.

(3) *Foreign parent* means the foreign person, or the first person outside the United States in a foreign chain of ownership, which has direct investment in a U.S. business enterprise, including a branch.

(4) *Affiliated foreign group* means (i) the foreign parent, (ii) any foreign person, proceeding up the foreign parent's ownership chain, which owns more than 50 per centum of the person below it up to and including that person which is not owned more than 50 per centum by another foreign person, and (iii) any foreign person, proceeding down the ownership chain(s) of each of these members, which is owned more than 50 per centum by the person above it.

(5) *Foreign affiliate of foreign parent* means, with reference to a given U.S. affiliate, any member of the affiliated foreign group owning the affiliate that is not a foreign parent of the affiliate.

(6) *Ultimate beneficial owner (UBO)* is that person, proceeding up the ownership chain beginning with and including the foreign parent, that is not more than 50 percent owned or controlled by another person. (An owner who creates a trust, proxy, power of attorney, arrangement, or device with the purpose or effect of divesting such owner of the ownership of an equity interest as part of a plan or scheme to avoid reporting information, is deemed to be the owner of the equity interest.)

(b) *Beneficial, not record, ownership is the basis of the reporting criteria.* In those cases where a U.S. affiliate is also required to identify the ultimate beneficial owner (UBO) of the foreign investment, if the UBO is an individual, only the country of location of the individual must be given.

(c) *Bearer shares.* If the ownership in a U.S. affiliate by any owner in the ownership chain from the U.S. affiliate up to and including the ultimate beneficial owner (UBO) is represented by bearer shares, the requirement to disclose the information regarding the UBO remains with the reporting U.S. affiliate, except where a company in the ownership chain has publicly traded bearer shares. In that case, identification of the UBO may stop with the identification of the company whose capital stock is represented by the publicly traded bearer shares. For closely held companies with nonpublicly traded bearer shares, identifying the foreign parent or the UBO as "bearer shares" is not an acceptable response. The U.S. affiliate must pursue the identification of the UBO through managing directors or any other official or intermediary.

(d) *Aggregation of real estate investments.* A foreign person holding real estate investments that are foreign direct investments in the United States must aggregate all such holdings for the purpose of applying the exemption level tests. If the aggregate of such holdings exceeds one or more of the exemption levels, then the holdings must be reported even if they individually would be exempt.

(e) *Consolidated reporting by U.S. affiliates.* A U.S. affiliate shall file on a fully consolidated basis, including in

the consolidation all other U.S. affiliates in which it directly or indirectly owns more than 50 per centum of the outstanding voting stock, unless the instructions for a given report form specifically provide otherwise. However, separate reports may be filed where a given U.S. affiliate is not normally consolidated due to unrelated operations or lack of control, provided written permission has been requested from and granted by BEA.

(f) The place and time for filing, and specific instructions and definitions relating to, a given report form will be given on the report form. Reports are required even though the foreign person's equity interest in the U.S. business enterprise may have been established, acquired, liquidated, or sold during the reporting period.

(g) *Exemption levels.* Exemption levels for individual report forms will normally be stated in terms of total assets, sales or gross operating revenues excluding sales taxes, and net income after income taxes, whether positive or negative, although different or special criteria may be specified for a given report form. If any one of the three items exceeds the exemption level and if the statistical data requested in the report are applicable to the entity being reported, then a report must be filed. Since these items may not have to be reported on a given form, a person claiming exemption from filing a given report form must furnish a certification as to the levels of the items on which the exemption is based or must certify that the data requested are not applicable. The exemption level tests shall be applied as outlined below.

(1) For quarterly report forms, as to the assets test, reports are required beginning with the quarter in which total assets exceed the exemption level; as to the test for sales (revenues) and net income after income taxes, reports are required for each quarter of a year in which the annual amount of these items exceeds or can be expected to exceed the exemption level. Quarterly reports for a year may be required retroactively when it is determined that the exemption level has been exceeded.

(2) For report forms requesting annual data after the close of the year in question, the test shall be whether any

one of the three items exceeded the exemption level during that year.

If total assets, sales or net income exceed the exemption level in a given year, it is deemed that the exemption level will also be exceeded in the following year.

The number and title of each report form, its exemption level and other reporting criteria, if any, pertaining to it, are given below.

(h) *Quarterly report forms.* (1) BE-605—Transactions of U.S. Affiliate, Except a U.S. Banking Affiliate, With Foreign Parent: One report is required for each U.S. affiliate exceeding an exemption level of \$30,000,000.

(2) BE-605 Bank—Transactions of U.S. Banking Affiliate with Foreign Parent: One report is required for each U.S. banking affiliate exceeding an exemption level of \$30,000,000.

(i) *Annual report form.* BE-15—Annual Survey of Foreign Direct Investment in the United States: One report is required for each consolidated U.S. affiliate, except a bank, exceeding an exemption level of \$30,000,000. A long form, Form BE-15(LF), must be filed by each nonbank U.S. affiliate for which at least one of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for U.S. income taxes—exceeds \$100,000,000 (positive or negative); a short form, Form BE-15(SF), must be filed by each nonbank U.S. affiliate for which at least one of the three items exceeds \$30,000,000 but no one item exceeds \$100,000,000 (positive or negative). U.S. affiliates that are banks are exempt from the reporting requirements of this survey.

(j) *Other report forms.* (1) BE-607—Industry Classification Questionnaire: In general, a U.S. affiliate will be assigned a BEA 3-digit industry code in the BE-12 Benchmark Surveys required by the Act to be conducted in 1980, 1987, and every fifth year thereafter. However, interim reports on Form BE-607 are required:

(i) For each U.S. affiliate newly established or acquired by a foreign person; or

(ii) For an existing U.S. affiliate whose industry classification changes so that either a previous BE-607 report

§ 806.15

or the last BE-12 report required to be filed does not accurately reflect the current industry classification of the U.S. affiliate.

For new U.S. affiliates, the BE-607 report must be filed only if the affiliate must file one of the other reports and shall be submitted with the initial filing of the related report. For a change in an existing U.S. affiliate which is currently filing one of the other reports, the BE-607 report must be filed whenever it is determined that a change from one BEA 3-digit industry classification to another has occurred.

(2) BE-12—Benchmark Survey of Foreign Direct Investment in the United States: Section 4b of the Act (22 U.S.C. 3103) provides that a comprehensive benchmark survey of foreign direct investment in the United States shall be conducted in 1980, 1987, and every fifth year thereafter. The survey is referred to as the “BE-12”. Exemption levels, specific requirements for, and the year of coverage of, a given BE-12 Survey may be found in § 806.17.

(3) BE-13—Initial Report on a Foreign Person’s Direct or Indirect Acquisition, Establishment, or Purchase of the Operating Assets, of a U.S. Business Enterprise, Including Real Estate. This report is to be filed either:

(i) By a U.S. business enterprise when a foreign person establishes or acquires directly, or indirectly through an existing U.S. affiliate, a 10 percent or more voting interest in that enterprise, including an enterprise that results from the direct or indirect acquisition by a foreign person of a business segment or operating unit of an existing U.S. business enterprise that is then organized as a separate legal entity; or

(ii) By the existing U.S. affiliate of a foreign person when it acquires a U.S. business enterprise, or a business segment or operating unit of a U.S. business enterprise, that the existing U.S. affiliate merges into its own operations rather than continuing or organizing as a separate legal entity.

A separate report must be filed for each foreign parent or existing U.S. affiliate that is a party to the transaction.

15 CFR Ch. VIII (1–1–01 Edition)

EXCLUSIONS AND EXEMPTIONS

(a) Residential real estate held exclusively for personal use and not for profitmaking purposes is not subject to the reporting requirements. A residence which is an owner’s primary residence that is then leased by the owner while outside the United States but which the owner intends to reoccupy, is considered real estate held for personal use. Ownership of residential real estate by a corporation whose sole purpose is to hold the real estate and where the real estate is for the personal use of the individual owner(s) of the corporation, is considered real estate held for personal use.

(b) An existing U.S. affiliate is exempt from reporting the acquisition of either a U.S. business enterprise, or a business segment or operating unit of a U.S. business enterprise, that it then merges into its own operations, if the total cost of the acquisition was \$3,000,000 or less and does not involve the purchase of 200 acres or more of U.S. land. (If the acquisition involves the purchase of 200 acres or more of U.S. land, it must be reported regardless of the total cost of the acquisition.)

(c) An established or acquired U.S. business enterprise, as consolidated, is exempt if its total assets (not the foreign parent’s or existing U.S. affiliate’s share) at the time of acquisition or immediately after being established were \$3,000,000 or less and it does not own 200 acres or more of U.S. land. (If it owns 200 acres or more of U.S. land, it must report regardless of the value of total assets.)

If exempt under (b) or (c), the existing U.S. affiliate or the established or acquired U.S. business enterprise must, nevertheless, file an “Exemption Claim, Form BE-13” to validate the exemption.

(4) Form BE-14—Report by a U.S. Person Who Assists or Intervenes in the Acquisition of a U.S. Business Enterprise by, or Who Enters into a Joint Venture With, a Foreign Person—to be completed either by:

(i) A U.S. person—including, but not limited to, an intermediary, a real estate broker, business broker, and a brokerage house—who assists or intervenes in the sale to, or purchase by, a foreign person or a U.S. affiliate of a foreign person, of a 10 percent or more voting interest in a U.S. business enterprise, including real estate; or

(ii) A U.S. person who enters into a joint venture with a foreign person to create a U.S. business enterprise.

A U.S. person is required to report only when such a foreign involvement is known; it is not incumbent upon the

U.S. person to ascertain the foreign status of a person involved in an acquisition unless the U.S. person has reason to believe the acquiring party may be a foreign person. If a U.S. person required to file a Form BE-14 files Form BE-13 relating to the acquisition of the U.S. business enterprise by a foreign person, then Form BE-14 is not required.

Total Exemptions—(a) Residential real estate held exclusively for personal use and not for profitmaking purposes is not subject to the reporting requirements. A residence which is an owner's primary residence that is then leased by the owner while outside the United States but which the owner intends to reoccupy, is considered real estate held for personal use. Ownership of residential real estate by a corporation whose sole purpose is to hold the real estate and where the real estate is for the personal use of the individual owner(s) of the corporation, is considered real estate for personal use.

(b) If the U.S. business enterprise acquired has total assets of, or if the capitalization (including loans from the joint venturers) of the joint venture to be established is, \$3,000,000 or less, than no report is required, provided the enterprise does not own 200 acres or more of U.S. land. (If it owns 200 acres or more of U.S. land, a report is required regardless of the value of total assets.)

(5) BE-21—Survey of Foreign Direct Investment in U.S. Business Enterprises Engaged in the Processing, Packaging, or Wholesale Distribution of Fish or Seafoods. Reporting consists of:

(i) Form BE-21P—Identification Questionnaire. A completed questionnaire is required from (a) each U.S. business enterprise that is a U.S. affiliate of a foreign person and that engaged in the processing, packaging, or wholesale distribution of fish or seafoods, and (b) any person to whom a questionnaire is sent by BEA.

(ii) Form BE-21A—Report for a U.S. Business Enterprise that is a U.S. Affiliate of a Foreign Person. A completed report is required from each U.S. business enterprise that is a U.S. affiliate of a foreign person and that engaged in the processing, packaging, or wholesale distribution of fish or seafoods.

(iii) Form BE-21B—Report for each Establishment of a U.S. Business Enterprise that is a U.S. Affiliate of a Foreign Person. A completed report is

required for each establishment, of the U.S. affiliate, that engaged in the processing, packaging, or wholesale distribution of fish or seafoods.

[42 FR 64315, Dec. 22, 1977; 43 FR 2169, Jan. 16, 1978, as amended at 44 FR 32586, June 6, 1979; 46 FR 23226, Apr. 24, 1981; 46 FR 60191, Dec. 9, 1981; 47 FR 13139, Mar. 29, 1982; 47 FR 14138, Apr. 2, 1982; 49 FR 3174, Jan. 26, 1984; 52 FR 8446, Mar. 18, 1987; 53 FR 1016, Jan. 15, 1988; 53 FR 15198, Apr. 28, 1988; 54 FR 1352, Jan. 13, 1989; 58 FR 38290, July 16, 1993; 58 FR 53125, Oct. 14, 1993; 63 FR 16892, Apr. 7, 1998; 64 FR 10389, Mar. 4, 1999]

§ 806.16 Rules and regulations for BE-10, Benchmark Survey of U.S. Direct Investment Abroad—1999.

A BE-10, Benchmark Survey of U.S. Direct Investment Abroad will be conducted covering 1999. All legal authorities, provisions, definitions, and requirements contained in §§ 806.1 through 806.13 and § 806.14(a) through (d) are applicable to this survey. Specific additional rules and regulations for the BE-10 survey are given in paragraphs (a) through (e) of this section. More detailed instructions are given on the report forms and instructions.

(a) *Response required.* A response is required from persons subject to the reporting requirements of the BE-10, Benchmark Survey of U.S. Direct Investment Abroad—1999, contained in this section, whether or not they are contacted by BEA. Also, a person, or their agent, who is contacted by BEA about reporting in this survey, either by sending them a report form or by written inquiry, must respond in writing pursuant to § 806.4. They may respond by:

(1) Certifying in writing, within 30 days of being contacted by BEA, to the fact that the person had no direct investment within the purview of the reporting requirements of the BE-10 survey;

(2) Completing and returning the "BE-10 Claim for Not Filing" within 30 days of receipt of the BE-10 survey report forms; or

(3) Filing the properly completed BE-10 report (comprising Form BE-10A or BE-10A BANK and Forms BE-10B(LF), BE-10B(SF), and/or BE-10B BANK) by May 31, 2000, or June 30, 2000, as required.